

WINSTON & STRAWN LLP

Stephen L. Sheinfeld
Christopher C. Costello
200 Park Avenue
New York, New York 10166
(212) 294-6700
ssheinfeld@winston.com
cccostello@winston.com

*Attorneys for Defendants Marsh & McLennan
Companies, Inc. and Marsh USA Inc.*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STEVEN H. ANDERSON, JACK S. FLUG,
and JEFFREY R. LATTMANN,

Plaintiffs,

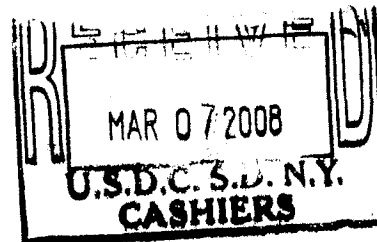
v.

MARSH & MCLENNAN COMPANIES,
INC., MARSH USE INC., and
DOES 1 through 50, inclusive

Defendants.

**TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK:**

Pursuant to 28 U.S.C. §§ 1331, 1367(a), and 1441, Defendants, Marsh & McLennan Companies, Inc. and Marsh USA, Inc. (collectively, "Defendants"), by their attorneys, Winston & Strawn LLP, hereby give notice of removal of the above-captioned action from the Supreme Court of the State of New York, and in support thereof, respectfully state as follows:



JUDGE BATTS

08 CV 2378

**NOTICE OF REMOVAL
OF CIVIL ACTION**

1. On or about February 5, 2008, Plaintiffs, Steven H. Anderson, Jack S. Flug, and Jeffrey R. Lattmann (collectively, "Plaintiffs"), filed a Verified Complaint in the Supreme Court of the State of New York, captioned *Steven H. Anderson, Jack S. Flug, and Jeffrey R. Lattmann against Marsh & McLennan Companies, Inc., Marsh USA, Inc., and Does 1 through 50, inclusive*, Case No. 08600345 (the "Action"). All documents comprising the attached Exhibit A constitute all process, pleadings, and orders received by Defendants in the Action as required by 28 U.S.C. § 1446(a)(b) and a copy of all records and proceedings in the state court as required by Local Civil Rule 81.1(b).

2. Defendants received service of the summons on February 7, 2008.

3. This Court is the United States District Court for the district in which the Action is pending.

4. Plaintiffs' complaint in the Action (the "Complaint") purports to assert four state law causes of action for breach of contract. The basis for each of Plaintiffs' four causes of action is Plaintiffs' allegation that Defendants failed to pay Plaintiffs special retention awards, annual bonuses, severance pay, and earned option awards to which Plaintiffs claim they were entitled. *See* Complaint ¶¶ 1, 45-60.

5. Removal of the Action is proper based on federal question jurisdiction. District courts have original jurisdiction over cases "arising under the Constitution, laws, or treaties of the United States." *City of Chicago v. International College of Surgeons*, 522 U.S. 156, 163 (1997). Here, removal is proper because federal law, the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1101 *et seq.*, preempts certain of Plaintiffs' state law claims.

6. "A claim styled as a state common law cause of action is removable under ERISA if it 'relates to' an employee benefit plan within the meaning of section 514(a), 29 U.S.C. § 1144(a), and falls within the scope of the statute's civil enforcement provisions, found in section 502(a), 29 U.S.C. § 1132(a)." *Smith v. Dunham-Bush, Inc.*, 959 F.2d 6, 8 (2d Cir. 1992) (citing *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 63-64 (1987) (holding that "complete preemption" doctrine applies to ERISA claims)). Thus, "a plaintiff may not defeat removal by omitting to plead necessary federal questions....[and a court] may uphold removal even though no federal question appears on the face of the plaintiff's complaint." *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470, 475 (1998).

7. Plaintiffs' claims in the Action necessarily relate to a severance plan created, maintained and regulated by ERISA. Further, Plaintiffs' claims fall within the scope of ERISA's civil enforcement provisions. 29 U.S.C. § 1132(a)(1)(B).

8. This Court has federal question jurisdiction over Plaintiffs' causes of action for ERISA benefits pursuant to 28 U.S.C. § 1331.

9. In addition, this Court has supplemental jurisdiction over Plaintiffs' purported state law claims pursuant to 28 U.S.C. § 1367(a), as those claims form part of the same case or controversy as Plaintiffs' ERISA claims. The core allegations underlying all of Plaintiffs' claims are identical. Plaintiffs' claims are sufficiently related to form part of the same case or controversy. *See City of Chicago*, 522 U.S. at 165 (finding that court can exercise supplemental jurisdiction over claims that derive from a "common nucleus of operative facts").

10. In light of the foregoing, removal of this case is proper pursuant to 28 U.S.C. § 1441.

11. In accordance with 28 U.S.C. § 1446(b) and Local Civil Rule 81.1(b), this Notice of Removal is being filed within 30 days of Defendants' receipt of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.

12. After filing this Notice of Removal, Defendants will promptly serve written notice of removal upon Plaintiffs, and will file a true and correct copy of the Notice of Removal with the Clerk of the Supreme Court of the State of New York.

13. This Notice of Removal does not waive any objections Defendants may have to defects in process or service of process, jurisdiction, venue, or any other defenses.

WHEREFORE, Defendants respectfully remove this case to the United States District Court for the Southern District of New York.

Dated: March 7, 2008

Respectfully Submitted,

WINSTON & STRAWN LLP

By: _____


Stephen L. Sheinfeld

Stephen L. Sheinfeld
Christopher C. Costello
200 Park Avenue
New York, New York 10166-4193
(212) 294-6700
(212) 294-4700 (facsimile)
ssheinfeld@winston.com
cccostello@winston.com

*Attorneys for Defendants Marsh &
McLennan Companies, Inc. and
Marsh USA Inc.*

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Defendants hereby certifies under penalty of perjury that a true and correct copy of the foregoing NOTICE OF REMOVAL was served via U.S. Mail this 7th day of March, 2008, upon:

Blair C. Fensterstock, Esq.
Jeanne M. Valentine, Esq.
Allison M. Charles, Esq.
FENSTERSTOCK & PARTNERS LLP
30 Wall Street, 9th Floor
New York, New York
10005

Dated: March 7, 2008



Christopher C. Costello

EXHIBIT A

TAB 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
STEVEN H. ANDERSON, JACK S. FLUG, and
JEFFREY R. LATTMANN,

Plaintiffs,

— against —

MARSH & MCLENNAN COMPANIES, INC.,
MARSH USA INC., and DOES 1 through 50, inclusive,

Defendants.
-----X

Index No.

Date of Filing:

Plaintiff has designated New York
County as the place of trial
pursuant to CPLR § 503.

08600345

SUMMONS

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the verified complaint in this action and to serve a copy of your answer, or if the verified complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs' attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: February 4, 2008

FENSTERSTOCK & PARTNERS LLP

By: Blair C. Fensterstock

Blair C. Fensterstock
Jeanne M. Valentine
Allison M. Charles

30 Wall Street, 9th Floor
New York, NY 10005
(212) 785-4100

Attorneys for Plaintiffs

TO:

Marsh & McLennan Companies, Inc.
1166 Avenue of the Americas
New York, New York 10036

Marsh USA Inc.
1166 Avenue of the Americas
New York, New York 10036

FILED
FEB 05 2008
COUNTY CLERKS OFFICE
NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
STEVEN H. ANDERSON, JACK S. FLUG, and
JEFFREY R. LATTMANN,

Plaintiffs,

Index No.

-- against --

VERIFIED COMPLAINT

MARSH & MCLENNAN COMPANIES, INC.,
MARSH USA INC., and DOES 1 through 50, inclusive,

Defendants.
-----X

08600345

1. Plaintiffs Steven H. Anderson, Jack S. Flug and Jeffrey R. Lattmann, by their attorneys Fensterstock & Partners LLP as and for their Complaint, allege as follows:

INTRODUCTION

2. This is an action by three former long-term employees of the Marsh & McLennan Companies to recover in excess of \$3 million for Defendants' breach of contract consequent to Defendants' failure to pay Plaintiffs their earned special retention awards, annual bonuses, severance pay and for their earned option awards.

PARTIES

3. Plaintiff Steven H. Anderson is a resident of Manalapan, New Jersey.
4. Plaintiff Jack S. Flug is a resident of Long Island, New York.
5. Plaintiff Jeffrey R. Lattmann is a resident of New Providence, New Jersey.
6. Upon information and belief, Defendant Marsh & McLennan Companies, Inc. ("MMC"), is a global professional services firm which provides advice and solutions in risk,

strategy, and human capital in more than 100 countries, is a Delaware corporation, and maintains its principal place of business at 1166 Avenue of the Americas, New York, New York, 10036.

7. Upon information and belief, Defendant Marsh USA Inc. ("Marsh"), a Delaware corporation, is a risk and insurance services subsidiary of MMC with 26,000 employees, annual revenues approaching \$5 billion, and provides global risk management, risk consulting, insurance brokering, alternative risk financing, and insurance program management services for businesses, public entities, associates, professional services organizations, and private clients. Marsh maintains its principle place of business at 1166 Avenue of the Americas, New York, New York, 10036.

8. The true names and capacities of Defendants named herein as Does 1 through 50 are unknown to Plaintiffs, who, therefore, sue these Defendants by such fictitious names. Plaintiffs will amend the complaint to show the true names and capacities of such Does when they have been ascertained. Upon information and belief, Does 1 through 50 were responsible in some manner for the acts and transactions hereinafter alleged and, therefore, are liable to Plaintiffs.

JURISDICTION AND VENUE

9. This Court has personal jurisdiction over the Defendants under CPLR §§ 301 and 302 because Defendants are based in New York and/or transact substantial business in New York, and/or because each Defendant has transacted business in New York in connection with the other Defendants and/or the acts described herein.

10. Venue is proper in New York County, pursuant to CPLR § 503, because Defendants MMC and Marsh have their principal offices in this county and the causes of action herein arose in this county.

STATEMENT OF FACTS

11. Plaintiff Mr. Anderson was employed in various capacities by Marsh from August 1989 through December 30, 2004, his most recent title being Chairman of all of U.S. FINPRO Client Advisory. FINPRO was an operating unit of MMC with about 540 employees in 2004.

12. Within Marsh, FINPRO earned large profits for the Company. FINPRO was highly successful and had an entrepreneurial culture.

13. Plaintiff Mr. Flug was employed in various capacities by Marsh from March 1995 through December 30, 2004, his most recent title being Managing Director and Vice Chairman of FINPRO.

14. Plaintiff Mr. Lattmann was employed in various capacities by Marsh from 1990 through December 30, 2004, his most recent title being Managing Director and Head of all U.S. FINPRO Placement.

15. In or around the spring of 2002, Mr. Anderson received an offer of employment from AON, Marsh's biggest competitor. Senior employees at Marsh became aware of the details of this offer. Mr. George Mikes, who was, at that time, the chairman of the Global Risk Management Practice at Marsh, induced Mr. Anderson to stay at Marsh by offering him additional compensation and restricted stock options. The compensation that Mr. Mikes and Marsh offered to

Mr. Anderson to stay at Marsh was a mere fraction of the compensation that was offered to Mr. Anderson by AON but, out of loyalty to Marsh, Mr. Anderson stayed on at Marsh. Mr. Anderson accepted Mr. Mikes' offer in consideration of his continued employment at Marsh. As a direct result of Mr. Mikes' offer, Mr. Anderson was induced, encouraged and convinced to continue his employment at Marsh.

16. In or around 2002, Mr. Flug was also contacted by Marsh's competitor, AON. Mr. Flug was also induced to stay at Marsh by the offer of additional compensation and restricted stock options. Mr. Flug did not take advantage of or further pursue AON's interest in him, instead he stayed on at Marsh. Mr. Flug accepted Marsh's offer in consideration of his continued employment at Marsh. As a direct result of this offer, Mr. Flug was induced, encouraged and convinced to continue his employment at Marsh.

17. On or around October 14, 2004, then-New York Attorney General Eliot Spitzer commenced a lawsuit on behalf of the State of New York entitled *Spitzer v. Marsh & McLennan Companies, Inc. et al.*, Index No. 403342/2004, alleging certain wrongful acts, including fraudulent business practices, antitrust violations, and fraud.

18. As a result of the *Spitzer v. Marsh & McLennan Companies, Inc. et al.* lawsuit, MMC's stock decreased in value and Marsh, which was the MMC subsidiary in which Plaintiffs were employed, became embroiled in panic.

19. On November 18, 2004, to induce him to stay at Marsh, Mr. Anderson was offered and accepted a Special Retention Award from MMC in the amount of \$300,000, a copy of which is annexed hereto as Exhibit A, and wholly incorporated herewith. Based on the promise that

he would be employed through the vesting of the Retention Award (unless terminated for cause), Mr. Anderson agreed to stay at Marsh. According to the Terms and Conditions of this award, it was "to be paid in cash and/or readily tradable MMC Stock, as determined by the Company at the time of payment." The award was to be paid quarterly, over one year, on or around the following dates:

- March 31, 2005 10% of total award
- June 30, 2005 15% of total award
- September 30, 2005 25% of total award
- December 31, 2005 50% of total award

To be eligible to receive each award payment, you must be actively employed by the Company on the last day of the quarter preceding the payment date, and not serving notice of your resignation at the time. Example: to receive the March 31, 2005 award you must be actively employed on December 31, 2004 and not have submitted notice of resignation on or before December 31, 2004.

The Terms and Conditions go on to state,

[i]f you are terminated involuntarily, not for Cause, you will be eligible to receive the payment for the full quarter in which you are terminated, but will not receive future payments. If you are terminated for Cause, you will forfeit all future payments and be required to repay all prior retention award payments, including the value, determined at the time of payment, of any shares received. For the purpose of this retention award, a termination "for Cause" is defined as misconduct, including any act or behavior that violates the Company's policies or standards of conduct, or may subject the individual or the Company to civil or criminal liability.

20. On November 18, 2004, to induce him to stay at Marsh, Mr. Flug was offered and accepted a Special Retention Award from MMC in the amount of \$300,000. Based on the promise that he would be employed through the vesting of the Retention Award (unless terminated

for cause), Mr. Flug agreed to stay at Marsh. The Terms and Conditions of Mr. Flug's Award are identical to those of Mr. Anderson's as stated above in Paragraph 19.

21. On November 18, 2004, to induce him to stay at Marsh, Mr. Lattmann was offered and accepted a Special Retention Award from MMC in the amount of \$104,000, a copy of which is annexed hereto as Exhibit A, and wholly incorporated herewith. Based on the promise that he would be employed through the vesting of the Retention Award (unless terminated for cause), Mr. Lattmann agreed to stay at Marsh. The Terms and Conditions of Mr. Lattmann's Award are identical to those of Mr. Anderson's as stated above in Paragraph 19.

22. In early December 2004, during a regular quarterly FINPRO executive committee meeting, Mr. Anderson asked the members of the committee to tell him by the end of the year if they were staying with the company or leaving.

23. In mid-December 2004, Mr. Anderson had a conversation with George Mikes, who was, at that time, the chairman of the Global Risk Management Practice at Marsh. During this conversation, Mr. Anderson, a loyal employee, inquired in good faith about his options for taking on increased and different responsibilities in the future within Marsh for the purpose of aiding the ailing company. Mr. Mikes stated to Mr. Anderson, "I don't think this is going to happen for you."

24. In mid-December 2004 during an annual company meeting, Mr. Anderson expressed his concerns that the company was in trauma, and that he believed those in elevated positions, such as himself, needed to take active steps to repair the ailing business. He stated that he felt he could help the firm in various ways and that he would seek the opportunity to do so. He

stated that the most useful positions for him may not necessarily be exclusively within FINPRO, but it was his intention to help the company.

25. It was in all of Marsh employees' best interests to help rescue MMC and Marsh from turmoil, in part, because many employees, including Plaintiffs, are stockholders of Marsh.

26. Between October 14 and December 30, 2004, senior employees at Marsh regularly asked Plaintiffs if they were looking for other employment. While Plaintiffs admitted that they were exploring possibilities both within and outside of Marsh, Plaintiffs continued to seek opportunities to assist Marsh during this time of uncertainty and continued to carry out their duties in good faith.

27. During this same period, most Marsh employees were considering other employment options due to the uncertainty of the outcome of the Spitzer lawsuit. In fact, between mid-October 2004 and the end of December 2004, Tom Zacharopoulos and Henry Whiting who were, at that time, senior employees of Marsh, actively sought employment opportunities outside of Marsh and MMC and actively recruited Plaintiffs to leave Marsh; however, no retaliatory action was taken against Messrs. Zacharopoulos or Whiting.

28. In or around late December 2004, Dean Klisura, Managing Director and Chairman of FINPRO Placement, approached Mr. Lattmann and stated that he was aware that certain insurance brokers were interested in hiring Mr. Lattmann away from Marsh. Mr. Klisura induced and encouraged Mr. Lattmann to stay at Marsh and offered Mr. Lattmann additional compensation and stock options to stay at Marsh. Mr. Lattmann made no response at that point in time.

29. On or around Monday, December 20, 2004, of Christmas week, George Mikes informed Mr. Flug that he would be replacing Mr. Anderson with Dean Klisura as Chairman of all of U.S. FINPRO Client Advisory. Mr. Mikes stated to Mr. Flug that they "needed to continue this dialogue."

30. Mr. Flug informed George Mikes that he would be out of the office on vacation until December 30, 2004. Upon his return to the office on December 30, 2004, Mr. Flug received multiple voice messages from Mr. Mikes demanding a return call by the close of business of the previous day, December 29, 2004. At no time before Mr. Mikes' arbitrary December 29 deadline, received by Mr. Flug on December 30, did Mr. Mikes attempt to reach Mr. Flug by mobile telephone or e-mail. Mr. Flug's mobile telephone number and e-mail address were available on a directory of Managing Directors' contact information which was available to all Managing Directors at Marsh.

31. On December 30, 2004, Mr. Mikes called Mr. Flug's mobile telephone with Pamela Harrison who was, at that time, Senior Vice President of Marsh's Human Resources Department also on the line. Knowing that Mr. Flug had been out of the office on vacation, not due to return until December 30, Mr. Mikes irrationally accused Mr. Flug of intentionally ignoring his messages asking for a return call by December 29, 2004. Mr. Mikes informed Mr. Flug that he was terminated effective immediately, but no explanation was provided to Mr. Flug at that time. Mr. Mikes then disconnected from the call and left Mr. Flug to speak with Ms. Harrison.

32. On December 30, 2004, Mr. Mikes left a voice mail message for Mr. Anderson informing Mr. Anderson that he was terminated, although no explanation was provided to Mr. Anderson either at that time.

33. On December 30, 2004, Mr. Mikes left a voice mail message for Mr. Lattmann informing Mr. Lattmann that he was terminated, again, with no explanation.

34. On December 30, 2004 after being informed by Mr. Mikes that they were being terminated, Plaintiffs each met individually with Pamela Harrison of Marsh's Human Resources Department. Ms. Harrison informed Plaintiffs that they were fired "for cause." When asked what this alleged "cause" consisted of, Ms. Harrison stated only that Plaintiffs were terminated for "lack of confidence." Ms. Harrison informed Plaintiffs that because Marsh chose to characterize their terminations as "for cause," they would not be receiving severance pay, or any of their retention bonuses, earned bonuses, vested options, or unvested shares and options.

35. On or around December 31, 2004, Plaintiffs each received a letter from Marsh via United States mail that was dated December 30, 2004. These letters merely stated that Plaintiffs' employment was terminated as of December 30, 2004. No further explanation was offered.

36. In fact, the termination of Messrs. Anderson, Flug and Lattmann was not "for cause." Marsh had no reasonable basis for Plaintiffs' termination and instead created the feigned explanation that Plaintiffs were fired for evaluating alternative employment options during the uncertain months of the Spitzer investigation. In fact, the events surrounding Plaintiffs' termination were part of a ruse contrived to deprive Plaintiffs of their vested options, unvested shares and options, retention and earned bonuses as well as standard severance pay. The actions taken against

Plaintiffs were discriminatory and arbitrary; Messrs. Zacharopoulos and Whiting were not terminated by MMC or Marsh notwithstanding that they actively sought other employment and recruited and solicited Marsh employees to leave MMC and/or Marsh.

37. Unlike Messrs. Zacharopoulos and Whiting who kept their jobs, Plaintiffs did not recruit or solicit clients or other employees to leave MMC or Marsh while employed by Marsh.

38. Marsh used this allegation of "lack of confidence" and "cause" as a pretext to deny Plaintiffs' severance pay, their retention bonuses, earned bonuses, vested options, and unvested shares and options, upon their termination.

39. At the outset of Plaintiffs' employment, Marsh and Plaintiffs agreed that Plaintiffs would be paid an annual bonus, which was an integral part of Plaintiffs' comprehensive total compensation package. Plaintiffs' annual bonuses at Marsh were based on factors such as tenure, amounts received the year prior, and performance, in accordance with the agreement. These bonuses were ordinarily paid in February or March of the following year for the work performed during the prior year. Plaintiffs' bonuses were not discretionary.

40. Typically, while employed by Marsh, Plaintiffs would receive an annual salary increase in or around April.

41. Upon their termination from Marsh, Plaintiffs did not receive their Special Retention Awards, their annual bonuses for the 2004 year of service which they had completed, their vested options, severance pay, or unvested shares or options.

42. Mr. Anderson is entitled to his Retention Bonus of \$300,000; his 2004 earned bonus of \$350,000; severance of \$400,000; 48,300 vested but cut-off options valued at \$241,500; and the value of 17,399 unvested shares and 33,070 unvested options.

43. Mr. Flug is entitled to his Retention Bonus of \$300,000; his 2004 earned bonus of \$270,000; severance of \$325,000; 35,800 vested but cut-off options valued at \$179,000; and the value of 10,276 unvested shares and 31,170 unvested options.

44. Mr. Lattmann is entitled to his Retention Bonus of \$104,000; his 2004 earned bonus of \$250,000; severance of \$200,000; 4,450 vested but cut-off options valued at \$22,250; and the value of 3,408 unvested shares and 5,840 unvested options.

FIRST CLAIM
(Breach of Contract - Special Retention Awards)

45. Plaintiffs repeat, reallege, and incorporate each and every allegation in Paragraphs 1 through 44, with the same force and effect as if fully set forth herein.

46. On November 18, 2004, Plaintiffs were offered and accepted Special Retention Awards from MMC in consideration for Plaintiffs' agreeing to continued employment at Marsh and with the promise that their employment would continue (unless terminated for cause) through the vesting period. Copies of the Special Retention Awards are annexed hereto as Exhibit A, and wholly incorporated herewith. Upon their arbitrary and wrongful termination, under the guise of fabricated cause, Plaintiffs did not receive their Special Retention Awards although Plaintiffs did not engage in any misconduct, including any act or behavior that violates the Company's policies or standards of conduct, or that which may subject the individual or the Company to civil or criminal

liability. Mr. Anderson was denied his Retention Bonus of \$300,000; Mr. Flug was denied his Retention Bonus of \$300,000; and Mr. Lattmann was denied his Retention Bonus of \$104,000.

47. In reliance on their contracts with Defendants and in reliance on the broken promises made by Defendants to Plaintiffs, Plaintiffs forewent other, more lucrative, employment opportunities in order to stay at Marsh and help re-build the company during its time of turmoil and uncertainty.

48. As a direct and proximate result of the breach of contract by Defendants as set forth herein, Plaintiffs have been damaged in an amount to be proved at trial but believed to be at least \$704,000.

SECOND CLAIM
(Breach of Contract - Annual Bonus Awards)

49. Plaintiffs repeat, reallege and incorporate each and every allegation in Paragraphs 1 through 48 with the same force and effect as if fully set forth herein.

50. It is regular practice for Marsh to pay annual non-discretionary, performance-based bonuses to employees. The Agreement between Marsh and Plaintiffs that Plaintiffs would be paid an annual bonus was agreed to at the outset of Plaintiffs' employment with Marsh and was an integral part of Plaintiffs' comprehensive compensation package. In consideration for Marsh's agreement to pay Plaintiffs an annual performance-based bonus, Plaintiffs completed the 2004 year of service to Marsh in good faith but were denied the bonus portion of their earned compensation. Marsh breached the Agreement in that Mr. Anderson was denied his 2004 earned bonus of \$350,000; Mr. Flug was denied his 2004 earned bonus of \$270,000; and Mr. Lattmann was denied his 2004 earned bonus of \$250,000.

51. As a direct and proximate result of the breach of contract by Defendants as set forth herein, Plaintiffs have been damaged in an amount to be proved at trial but believed to be at least \$870,000.

THIRD CLAIM
(Breach of Contract - Severance Pay)

52. Plaintiffs repeat, reallege and incorporate each and every allegation in Paragraphs 1 through 51 with the same force and effect as if fully set forth herein.

53. The Marsh Inc. Employee Handbook, dated May 2002, at page 12, unequivocally guarantees that "Managing Directors eligible for Enhanced Severance Pay will receive one (1) year's Base Salary." A copy is annexed hereto as Exhibit B, and wholly incorporated herewith. According to that same Agreement, "a Plan Participant who executes and returns a Waiver and Release Agreement in the form and within the time required by the Company. . . which may include, without limitation, non-solicitation provisions, will be eligible to receive Enhanced Severance Benefits."

54. Notwithstanding that Plaintiffs were eligible to receive Enhanced Severance Benefits, Plaintiffs were not given the opportunity to execute the Waiver and Release Agreement, yet refrained from solicitation of Marsh and/or MMC clients and employees in accordance with the Agreement. Each Plaintiff was eligible for Enhanced Severance Pay, yet each was denied severance pay in violation of the Agreement.

55. It is Marsh's regular practice to make severance payments to departing Managing Directors. Plaintiffs relied on this practice in accepting and continuing employment with Marsh, and in refraining from solicitation of Marsh clients and employees. Marsh breached this

Agreement in bad faith in that Mr. Anderson was denied severance pay of \$400,000; Mr. Flug was denied severance pay of \$325,000; and Mr. Lattmann was denied severance pay of \$200,000.

56. As a direct and proximate result of the breach of contract by Defendants are set forth herein, Plaintiffs have been damaged in an amount to be proved at trial but believed to be at least \$925,000.

**FOURTH CLAIM
(Breach of Contract - Vested and Unvested Options)**

57. Plaintiffs repeat, reallege, and incorporate each and every allegation in Paragraphs 1 through 56 with the same force and effect as if fully set forth herein.

58. Pursuant to the Marsh & McLennan Companies 2000 Employee Incentive and Stock Award Plan, Plaintiffs are entitled to the value of their vested and unvested options. A copy of the Stock Awards and Plan is annexed hereto as Exhibit C, and wholly incorporated herewith.

59. Mr. Anderson is entitled to the value of 17,399 unvested shares and 33,070 unvested options; Mr. Flug is entitled to 35,800 vested but cut-off options valued at \$179,000, and the value of 10,276 unvested shares and 31,170 unvested options; and Mr. Lattmann is entitled to 4,450 vested but cut-off options valued at \$22,250; and the value of 3,408 unvested shares and 5,840 unvested options.

60. As a direct and proximate result of the foregoing, Plaintiffs have been injured in an amount to be proved at trial but believed to be at least One Million Dollars (\$1,000,000).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that the Court enter judgment awarding Plaintiffs:

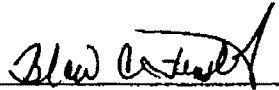
- A. On the First Claim (Breach of Contract - Special Retention Awards), damages in an amount to be proved, but believed to be at least \$704,000;
- B. On the Second Claim (Breach of Contract - Annual Bonus Awards), damages in an amount to be proved, but believed to be at least \$870,000;
- C. On the Third Claim (Breach of Contract - Severance Pay), damages in an amount to be proved, but believed to be at least \$925,000;
- D. On the Fourth Claim (Breach of Contract - Vested and Unvested Options), damages in an amount to be proved, but believed to be at least \$1 million;
- E. Costs, expenses, and reasonable attorneys' fees to the fullest extent authorized by law; and

F. Such other and further relief which the Court deems necessary and proper.

Dated: New York, New York
February 4, 2008

FENSTERSTOCK & PARTNERS LLP

By:



Blair C. Fensterstock
Jeanne M. Valentine
Allison M. Charles

30 Wall Street, 9th Floor
New York, New York 10005
Telephone: (212) 785-4100

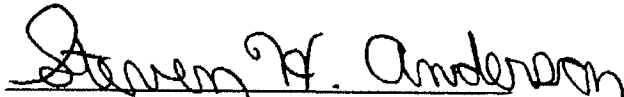
Attorneys for Plaintiffs

VERIFICATION

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

STEVEN H. ANDERSON, being duly sworn, deposes and says:

I am a plaintiff in this action. I have read the foregoing Complaint and know the contents thereof. The Complaint is true to my knowledge except as to those matters alleged upon information and belief and as to those matters I believe them to be true.


STEVEN H. ANDERSON

Sworn to before me this
27th day of January, 2008


Notary Public

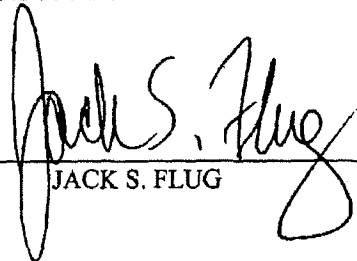
CHARITY LYNN RAMEY
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires July 20, 2011

VERIFICATION

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)


JACK S. FLUG, being duly sworn, deposes and says:

I am a plaintiff in this action. I have read the foregoing Complaint and know the contents thereof. The Complaint is true to my knowledge except as to those matters alleged upon information and belief and as to those matters I believe them to be true.



JACK S. FLUG

Sworn to before me this
4th day of ~~January~~ ^{February}, 2008



Notary Public

CHRISTINA E. COSTA
Notary Public, State of New York
No. 02CO6165254
Qualified in Nassau County
Commission Expires May 7, 2011

VERIFICATION

STATE OF NEW YORK)
 :
COUNTY OF NEW YORK) ss.:

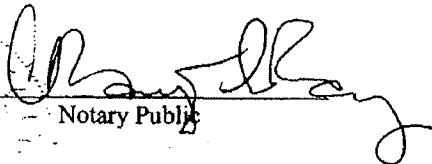
JEFFREY R. LATTMANN, being duly sworn, deposes and says:

I am a plaintiff in this action. I have read the foregoing Complaint and know the contents thereof. The Complaint is true to my knowledge except as to those matters alleged upon information and belief and as to those matters I believe them to be true.



JEFFREY R. LATTMANN

Sworn to before me this
29th day of January, 2008


Notary Public

CHARITY LYNN RAMEY
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires July 20, 2011

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

STEVEN H. ANDERSON, JACK S. FLUG, and
JEFFREY R. LATTMANN,

Plaintiffs,

- against -

MARSH & MCLENNAN COMPANIES, INC.,
MARSH USA INC., and DOES 1 through 50, inclusive,

Defendants.

VERIFIED COMPLAINT

Attorney(s) for FENSTERSTOCK & PARTNERS LLP
Plaintiffs

30 WALL STREET
NEW YORK, NY 10005-2201
(212) 785-4100

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated:

Signature.....

Print Signer's Name.....

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

☐
NOTICE OF
ENTRY

that the within is a (certified) true copy of a
entered in the office of the clerk of the within named Court on

20

☐
NOTICE OF
SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the
Hon. one of the judges of the within named Court,
at
on 20, at M.

Dated:

Attorney(s) for FENSTERSTOCK & PARTNERS LLP

30 WALL STREET
NEW YORK, NY 10005-2201
(212) 785-4100

To:

Attorney(s) for



Marsh & McLennan Companies, Inc.
1166 Avenue of the Americas
New York, New York 10036
212 345 3550 Fax 212 345 3570
Michael Cherkasky@MMC.com
www.mmc.com

November 18, 2004

Steven Anderson
New York, NY

Dear Steve,

I want to thank you for all the work you have done to date to help rebuild our organization. There is still much to be accomplished and we look forward to you being part of the team that will help Marsh accomplish its goals over the next year.

In recognition of our particular interest in having you remain with the organization, we are granting you a special retention award in the amount of \$300,000. This award will be paid in cash, and/or readily tradable MMC Stock, as determined by the Company at the time of payment. The award will be paid to you quarterly, over one year, on or around the following dates:

- | | |
|----------------------|--------------------|
| • March 31, 2005 | 10% of total award |
| • June 30, 2005 | 15% of total award |
| • September 30, 2005 | 25% of total award |
| • December 31, 2005 | 50% of total award |

Further details of this award are attached.

You have also been granted an additional equity award of \$200,000. This award will vest over 3 years, 1/3 on each anniversary of the award date. More details on this equity award will be sent to you by MMC next month.

If you have questions, please feel free to raise them with the Business Leader who is communicating this award to you, or with your senior HR leader.

I know you will agree with me when I say that we all look forward to the continued success of the firm. On behalf of senior management throughout the organization, thank you again for your contribution to Marsh.

Sincerely,

A handwritten signature in cursive script, reading "Mike Cherkasky".

Mike Cherkasky

Special Retention Award
November 18, 2004

Terms and Conditions

This award will be paid to you quarterly, over one year, on or around the following dates:

- March 31, 2005 10% of total award
 - June 30, 2005 15% of total award
 - September 30, 2005 25% of total award
 - December 31, 2005 50% of total award
- The award will be paid in cash and/or readily tradable MMC Stock, as determined by the Company at the time of payment. Stock payments, if any, will be valued at the time of payment.
- To be eligible to receive each award payment, you must be actively employed by the Company on the last day of the quarter preceding the payment date, and not serving notice of your resignation at the time.
 - Example: to receive the March 31, 2005 award you must be actively employed on December 31, 2004 and not have submitted notice of resignation on or before December 31, 2004. To receive the June 30, 2005 payment you must be actively employed on March 31, 2005 and not have submitted notice of resignation on or before March 31, 2005.
- If you leave the organization voluntarily, you may retain the portion of the award previously paid and receive the award for the quarter in which you resign based on the eligibility requirements described above. However, you forfeit future payments.
 - Example: if you resign on April 2, 2005 you receive the June 30, 2005 payment, given that you were employed on March 31, 2005, but you would not receive the September 30, 2005 or December 31, 2005 payments.
- If you are terminated involuntarily, not for Cause, you will be eligible to receive the payment for the full quarter in which you are terminated, but will not receive future payments.
- If you are terminated for Cause, you will forfeit all future payments and be required to repay all prior retention award payments, including the value, determined at the time of payment, of any shares received. For the purpose of this retention award, a termination "for Cause" is defined as misconduct, including any act or behavior that violates the Company's policies or standards of conduct, or may subject the individual or the Company to civil or criminal liability.



Marsh & McLennan Companies, Inc.
1166 Avenue of the Americas
New York, New York 10036
212 345 3550 Fax 212 345 3570
Michael Cherkasky@MMC.com
www.mmc.com

November 18, 2004

Jeffrey Lattmann
New York, NY

Dear Jeffrey,

I want to thank you for all the work you have done to date to help rebuild our organization. There is still much to be accomplished and we look forward to you being part of the team that will help Marsh accomplish its goals over the next year.

In recognition of our particular interest in having you remain with the organization, we are granting you a special retention award in the amount of \$104,000. This award will be paid in cash, and/or readily tradable MMC Stock, as determined by the Company at the time of payment. The award will be paid to you quarterly, over one year, on or around the following dates:

- | | |
|----------------------|--------------------|
| • March 31, 2005 | 10% of total award |
| • June 30, 2005 | 15% of total award |
| • September 30, 2005 | 25% of total award |
| • December 31, 2005 | 50% of total award |

Further details of this award are attached. In addition, if you have questions, please feel free to raise them with the Business Leader who is communicating this award to you, or with your senior HR leader.

I know you will agree with me when I say that we all look forward to the continued success of the firm. On behalf of senior management throughout the organization, thank you again for your contribution to Marsh.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Cherkasky", is written over a horizontal line.

Mike Cherkasky

Special Retention Award
November 18, 2004

Terms and Conditions

This award will be paid to you quarterly, over one year, on or around the following dates:

- March 31, 2005 10% of total award
 - June 30, 2005 15% of total award
 - September 30, 2005 25% of total award
 - December 31, 2005 50% of total award
- The award will be paid in cash and/or readily tradable MMC Stock, as determined by the Company at the time of payment. Stock payments, if any, will be valued at the time of payment.
- To be eligible to receive each award payment, you must be actively employed by the Company on the last day of the quarter preceding the payment date, and not serving notice of your resignation at the time.
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- If you leave the organization voluntarily, you may retain the portion of the award previously paid and receive the award for the quarter in which you resign based on the eligibility requirements described above. However, you forfeit future payments.
 - Example: if you resign on April 2, 2005 you receive the June 30, 2005 payment, given that you were employed on March 31, 2005, but you would not receive the September 30, 2005 or December 31, 2005 payments.
- If you are terminated involuntarily, not for Cause, you will be eligible to receive the payment for the full quarter in which you are terminated, but will not receive future payments.
- If you are terminated for Cause, you will forfeit all future payments and be required to repay all prior retention award payments, including the value, determined at the time of payment, of any shares received. For the purpose of this retention award, a termination "for Cause" is defined as misconduct, including any act or behavior that violates the Company's policies or standards of conduct, or may subject the individual or the Company to civil or criminal liability.

a disability leave of absence, for a period of six (6) months or more; or

(ix) he/she commences new employment prior to the Termination Date.

c. In addition, an employee may not be eligible for severance benefits under this Plan if he/she is entitled to severance/notice pay as a matter of law, or is covered by an individual employment agreement or any other contractual arrangement:

(i) providing for continuation of salary and/or other payments or benefits if he/she is terminated before a certain date and/or providing for severance benefits; or

(ii) where the Company would be obligated to continue his/her salary and/or other payments or benefits after his/her termination because of a contractual guarantee; or

(iii) where the employee has executed or entered into a Memorandum of Agreement or other agreement with a company acquired by the Company or by a related company that provides for a termination notice period of greater than fifteen (15) days.

In that case, the employee will be eligible to receive the greater of: (A) the benefits provided for under the employment agreement or other contractual arrangement or the severance/notice pay to be provided as a matter of law; or (B) provided the employee executes a Waiver and Release Agreement in the form and within the time required by the Company, the benefits provided for under this Plan. In no event will an employee be entitled to receive benefits under both the employment agreement, other contractual arrangement, or under law, and this Plan.

3. Severance Benefits

The following severance benefits are provided for under this Plan. If, by virtue of the nature of the employee's termination, he/she is eligible for notice of termination pursuant to the federal Worker Adjustment Retraining &

Notification Act ("WARN") or any similar state or local plant or facility closing law, his/her severance benefits under this Plan shall be reduced by such statutory notice entitlement.

a. Basic Severance Benefit

Except as otherwise provided in this Section 3, an employee who meets the eligibility requirements of Section 2 above ("Plan Participant") will be eligible to receive Basic Severance Pay equal to two (2) weeks' Base Salary (as defined below).

b. Enhanced Severance Benefits

In lieu of the Basic Severance Benefit described above, a Plan Participant who executes and returns a Waiver and Release Agreement in the form and within the time required by the Company, the terms of which are incorporated herein by reference and which may include, without limitation, non-solicitation provisions, will be eligible to receive Enhanced Severance Benefits as follows:

(i) Enhanced Severance Pay

With the exception of Managing Directors, a Plan Participant eligible for Enhanced Severance Pay will receive Enhanced Severance Pay based on the chart below and the Plan Participant's Base Salary, as defined below. In no event, however, will Enhanced Severance Pay exceed one (1) year's Base Salary. Managing Directors eligible for Enhanced Severance Pay will receive one (1) year's Base Salary.

| Title | Enhanced Severance is the greater of: |
|-----------------------------|--|
| Non-officer | 2 weeks of Base Salary per Year of Service* OR 1 month's Base Salary |
| Assistant Vice President | 2 weeks of Base Salary per Year of Service* OR 3 months' Base Salary |
| Vice President | 2 weeks of Base Salary per Year of Service* OR 6 months' Base Salary |
| Senior Vice President | 2 weeks of Base Salary per Year of Service* OR 9 months' Base Salary |
| Managing Director | 12 months' Base Salary |

*To a maximum of one (1) year's Base Salary.

- For purposes of determining the amount of Basic or Enhanced Severance Pay a Plan Participant is eligible to receive under the terms of this Plan, the term "Base Salary" means such Plan Participant's base salary including any applicable shift differential, but exclusive of overtime compensation, commissions, bonuses, other payments, or any fringe benefits or other forms of remuneration, as in effect on the Plan Participant's Termination Date. Any performance/merit reviews that are pending or in process as of the Termination Date also shall not be taken into account in determining a Plan Participant's Base Salary or the amount of Severance Pay. For a Plan Participant who has switched from part-time to full-time, or vice versa, during the twelve (12) month period preceding his/her Termination Date, his/her Base Salary shall be determined using the weighted average of his/her base salary during such prior twelve (12) month period.
- In addition, for purposes of determining the amount of Enhanced Severance Pay a Plan

Participant is eligible to receive under the terms of this Plan, a Plan Participant will be credited with a Year of Service for each completed twelve (12) month period with the Company or any related company as measured from the Plan Participant's date of hire through the end of any Basic Severance period. Further, if a Plan participant has worked for a partial year of service, he/she will be credited with 1/12 of a Year of Service for each completed month or portion thereof. For rehires or employees with a change in employment status, the start dates of service for purposes of calculating severance will be the benefit vesting date under the general service rules applicable to the Marsh & McLennan Companies, Inc., United States Retirement Program. If applicable, appropriate service will be granted for continuous service with predecessor companies acquired by a Marsh & McLennan company. Notwithstanding the above, in no event will a Plan Participant be credited with Years of Service for any period for which the Plan Participant already received severance pay from the Company, any related company or any predecessor of the Company or related company.

(ii) Outplacement Counseling

A Plan Participant eligible for Enhanced Severance Pay will be eligible to receive, upon request, outplacement benefits at the Company's expense, at a level, for a duration (as set forth below), and by an outplacement Company to be selected by the Plan Administrator. Outplacement counseling must commence no later than sixty (60) days following the Termination Date. If the Plan Participant chooses not to participate in outplacement counseling as offered under this Plan, the Company will not provide the Plan Participant with any additional compensation in lieu thereof.

